

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2087.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	January 26, 2004
DATE OF REPORT:	February 25, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	May 13, 2004

COMPLAINT ISSUES:

Whether the School City of East Chicago violated:

511 IAC 7-25-4 by failing to follow procedures for an initial educational evaluation.

511 IAC 7-27-4(a)(5) by failing to convene the case conference committee (CCC) within ten (10) instructional days of the enrollment date of a student who has been receiving special education in another state.

511 IAC 7-27-7(c) by failing to provide services identified in an agreed-upon individualized education program (IEP) no later than ten (10) instructional days after the CCC meeting for a newly-enrolled student who had received special education services in another state.

511 IAC 7-23-1(p) by disclosing personally identifiable information without written and dated parental consent.

FINDINGS OF FACT:

1. The Student is ten years old and was found eligible in State X for special education and related services due to a learning disability.
2. In September of 2003, the Student enrolled in a public school in Indiana in a school corporation other than the school corporation that is the subject of this Complaint. On September 29, 2003, the Parent enrolled the Student in School #1 of the school corporation that is the subject of this Complaint (the School Corporation). The Student Enrollment Form contains a checkbox to indicate that a student is eligible for special education. The box was left blank. Although the Registrar of School #1 cannot document that the Parent was asked whether or not the Student had received special education services at a previous school, it is the Registrar's regular practice to ask that question (and other questions) at the time of enrollment.
3. In October, during a parent-teacher conference, the Parent inquired about services available to the Student. Although the Teacher does not recall that the Parent specifically asked about special education services during the parent-teacher conference, soon thereafter the Teacher began to prepare a referral for an educational evaluation. The Teacher had attended an in-service in October regarding the referral process and, in particular, how to complete the referral package. The Teacher is new to public elementary/secondary education and had no experience completing a referral for an educational

evaluation. Fearful that improperly-completed forms would result in a denial of services, the Teacher took time to work on the referral forms.

4. In December, the Parent and the Teacher met again. It is undisputed that the Parent asked if anything needed to be signed by the Parent in connection with the referral. The Teacher was not aware that a parent could initiate an educational evaluation by submitting to certified personnel a signed, written request for evaluation. The Teacher informed the Parent that signing consent would come later, once the referral package was sent to the Special Education Department. The School Corporation's local procedures do not establish a timeline for completion of referral packages and do not require school personnel to notify administrators or the Special Education Department of parents' oral requests for educational evaluations. As of the date this Complaint was filed (January 26, 2004), the referral package had not been sent to the Special Education Department.
5. On or about January 20, 2004, the Parent went to the office of the Special Education Department to inquire about the educational evaluation of the Student. The Parent informed the Referral Clerk that the Teacher had said that a referral was in preparation. The Referral Clerk offered to look for the referral package and, if the referral had not been received by the Special Education Department, to contact the Teacher. The Referral Clerk did not inform the Parent that a parent can initiate an educational evaluation by submitting to certified personnel a signed, written request for evaluation. The Referral Clerk is not certified personnel and does not have responsibility for conducting personal meetings to obtain informed consent for evaluation.
6. Immediately upon leaving the Special Education Department office, the Parent went to the home of an Advocate and related what had happened. The Advocate telephoned the Special Education Department to speak to the local director of special education. When told that the local director was not available, the Advocate indicated that the call was on behalf of a Parent who was just in the office and explained what the call was about. The Referral Clerk, who happened to answer the phone, responded quickly in an attempt to correct the facts about what had been said when the Parent was in the office. The Advocate's recollection is that the Referral Clerk referred to the Parent and the Student by name, whereas the Advocate spoke generally without mentioning names. Although the Referral Clerk has no recollection of identifying the Parent or the Student by name, the Referral Clerk acknowledges that it was clear that they were speaking about the Parent and the Student. Although the Referral Clerk did not reveal any personally identifiable information that was not already known to the Advocate, the Referral Clerk acknowledges that no questions were asked to determine the Advocate's authority to receive information about the status of a referral for an educational evaluation of the Student.
7. On January 22, 2004, the Student enrolled in School #2 in the School Corporation. The Parent completed another Student Enrollment Form. Again, no mark was placed in the box indicating eligibility for special education services. School #1 did not forward to School #2 the partially-completed referral package.
8. On or about January 29, 2004, the Student's then-current teacher sent a note to the Principal of School #2 about the Student's educational performance. This note prompted the Principal to review carefully the Student's educational records. The Principal noticed a report card from State X that contained a notation that looked like L.D. The Principal telephoned the public school in State X and followed up by faxing a request for records. The Student's educational records from the public school in State X were mailed January 29, 2004, and were received in the Special Education Department February 2, 2004. In addition, on January 29, 2004, the Parent informed the Complaint Investigator that the Student had received special education services in another state, and the Complaint Investigator notified the local director of special education by fax.

9. On February 5, 2004, the local director of special education wrote to the Parent, asking the Parent to contact the special education office to set up an appointment to sign for special education placement under the current IEP from State X. Although the last line of the letter spoke of a case conference, no dates were proposed for a case conference committee (CCC) meeting.
10. As of the date this complaint was filed (January 26, 2004), the Student's CCC had not convened. January 26, 2004, was more than ten instructional days after the Student enrolled in the School Corporation. As of February 13, 2004, the Student's CCC had not convened. February 13, 2004, was ten instructional days after January 29, 2004. (School was not in session on February 6, 2004.)
11. No documentation has been submitted showing that special education services have been provided to the Student, in accordance with the IEP from State X.

CONCLUSIONS:

1. Although Finding of Fact #1 indicates that an initial educational evaluation of the Student was not needed, Findings of Fact #3, #4, and #5 indicate that the School Corporation's procedures and training do not fulfill the intent of the rule that action will be taken in a timely manner when a parent makes an oral request for evaluation. The Child Find obligation under 511 IAC 7-25-2 underlies procedures for initial educational evaluations under 511 IAC 7-25-4. Therefore, a violation of 511 IAC 7-25-4 occurred.
2. Findings of Fact #1, #8, #9, and #10 indicate that the Student's case conference committee (CCC) was not convened within ten instructional days of the Student's enrollment date or within ten instructional days of the date it was discovered that the Student had been receiving special education in another state. Therefore, a violation of 511 IAC 7-27-4(a)(5) occurred.
3. Finding of Fact #9 and #11 indicate that the IEP from State X was not implemented. Therefore, a violation of 511 IAC 7-27-7(c) occurred.
4. Finding of Fact #6 indicates that, whether or not names were used, personally identifiable information about the Student was disclosed without written and dated consent by the Parent. Therefore, a violation of 511 IAC 7-23-1(p) occurred.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The School City of East Chicago shall:

1. By April 15, 2004, review and revise local procedures to eliminate unreasonable delays in the preparation of referrals for educational evaluations. By May 1, 2004, inform principals through in-service training, and other school personnel by memorandum, (1) about the revised procedures for referrals made by school personnel; (2) that a parent may request an initial educational evaluation by submitting a written request to certified personnel; and (3) that, if school personnel initiate a referral in response to a parent's oral request for evaluation, the referral package is to be completed in a timely manner.

Documentation of compliance shall consist of (1) a summary of the in-service training, including hand-outs, together with a list of the persons participating in the training, and (2) a copy of the memo to school personnel.

2. By March 3, 2004, convene the Student's case conference committee (CCC) to confirm that the Student is eligible for special education and related services under the criteria of Article 7, and to review and revise the Student's individualized education program (IEP). However, if the Student's CCC meeting has already met, then it is not required to reconvene.

Documentation of compliance shall consist of a copy of the Case Conference Report and IEP.

3. By March 4, 2004, implement the Student's IEP as written.

Documentation of compliance shall consist of records of services provided.

4. By April 2, 2004, conduct in-service training with the office staff of the Special Education Department regarding maintaining the confidentiality of personally identifiable information while handling telephone calls.

Documentation of compliance shall consist of a summary of the in-service training, including hand-outs, together with a list of the persons participating in the training.

Documentation of compliance, as specified above, shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by May 2, 2004.